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Supreme Court of the United States

October Term, 1957—No. 195

IN THE MATTER
of
LONG ISLAND LIGHTING COMPANY, *et al.*,

ENNIS M. NICHOLS, *et al.*,
Petitioners,
against
HARRY A. ALKER, *et al.*,
Respondents.

MOTION FOR LEAVE TO FILE A PETITION FOR REHEARING

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Supreme Court of the United States

[redacted]

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MOTION FOR LEAVE TO FILE A [redacted] PETITION FOR REHEARING

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

This motion for leave to file a [redacted] petition for rehearing is made on behalf of common stockholders of the original Long Island Lighting Company, reorganized by S. E. C. under Section 11(e) of the PUHC, on June 1, 1954, prior to which these petitioners owned 90% of the voting stock and common shares, for which they received 5% of the common stock of the reorganized company, with a then market value of about $1,500,000 and now worth between $50 million and $100 million based on the Company's present annual net earnings in excess of $12 million, as against the maximum estimate of $3½ million, on which the S. E. C. based its findings and the Court of Appeals for the Second Circuit enforced its reorganization plan, and is made for the following reasons:

1. This Court denied on October 14, 1957, their petition for a writ of certiorari to the United States Court of Appeals in the Second Circuit, on an incomplete presentation by the respondents of the record below, and the order of the District Court.

2. The Clerk of this Court declined to file their petition for review on the ground that it was "out of time" by five days, due to a misinterpretation by counsel of the first and second paragraphs of Rule 58, and the action of the Clerk was sustained by the Chief Justice. Counsel appears alone, has no staff or clerical assistants and, although a member of the Bar of this Court since 1920, has not engaged in general practice for thirty years. He, therefore, was not alert to the adoption of Rule 58 in 1954 and neglected to observe its first paragraph, assuming from the second paragraph and from his recollection of his own prior experience that a petition for review could be filed any time within the term.

3. In the petition for certiorari, counsel alluded to the following statement by the late Chief Justice Vinson:

> "Everyone who comes here has had one trial and one appeal."

The petition for rehearing contained the following statements:

> "The common stockholders, plaintiffs herein, allege fraud and conspiracy in the reorganization. No trial or pretence of trial has ever taken place and under the denial of this petition for certiorari, they and their counsel are permanently enjoined 'from commencing any action, suit or proceeding, at law or in equity in any court or before any executive or administrative officer, commission or tribunal, based on allegations of wrong-doing, fraud or conspiracy * * * .'"

> "It is the only recorded case in the annals of American jurisprudence where there has been a complete denial of justice and plaintiffs in a judicially found good cause of action have been summarily *enjoined from seeking justice.*"

4. No phase of the Long Island Lighting reorganization, begun in 1944, has ever been heard by this Court. In *Securities & Exchange Commission* v. *Long Island Lighting Company*, 59 Fed. Supp. 610 (E. D. N. Y. 1944) aff'd 148 Fed. 2d, 252 (2 Cir. 1945), the S. E. C. failed in an attempt to enjoin the consummation of a plan of reorganization approved by its stockholders and the Public Service Commission of New York and the certiorari granted by this Court became moot, 325 U. S. 833, when the management of the Company, which had theretofore contested the jurisdiction of S. E. C., acquiesced without consulting its stockholders, in the order of the S. E. C. and registered in accordance with the provisions of the Public Utilities Holding Company Act, thus evading the issue raised by these plaintiffs at the outset of this prolonged litigation. In this action by S. E. C., the present general counsel of the reorganized Long Island Lighting Company who has appeared for it throughout subsequent litigation, David K. Kadane, appeared as special counsel for the S. E. C.

WHEREFORE, your petitioner humbly prays to be allowed to file a [redacted] petition for rehearing and cites in support of this motion this Court's opinion of April 1, 1957 on a second petition for rehearing in the United States of America, petitioner, vs. the Ohio Power Company (No. 312—Oct. Term, 1955) in which this Court said:

> "We have consistently ruled that the interest in finality of litigation must yield where the interests of justice would render unfair the strict application of our rules."

Respectfully submitted,

HAROLD G. ARON,
Attorney for Petitioners.
Office and Post Office Address,
37 Wall Street,
New York 5, New York.

Certificate

I, Harold G. Aron, attorney for Petitioners Ennis M. Nichols, et al., does hereby certify that the foregoing motion for leave to file a petition for rehearing of this cause is presented in good faith and not for purposes of delay.

HAROLD G. ARON,
Attorney for Petitioners.